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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,936	11/26/2003	Declan Somerville	1849012US1AP	9427
27542	7590	09/07/2006	EXAMINER DEVOTI, PAUL D	
SAND & SEBOLT AEGIS TOWER, SUITE 1100 4940 MUNSON STREET, NW CANTON, OH 44718-3615			ART UNIT 3637	
PAPER NUMBER				

DATE MAILED: 09/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/723,936	<b>Applicant(s)</b> SOMERVILLE, DECLAN	
	<b>Examiner</b> Paul Devoti	<b>Art Unit</b> 3637	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 June 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 8-13 and 15-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-13 and 15-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

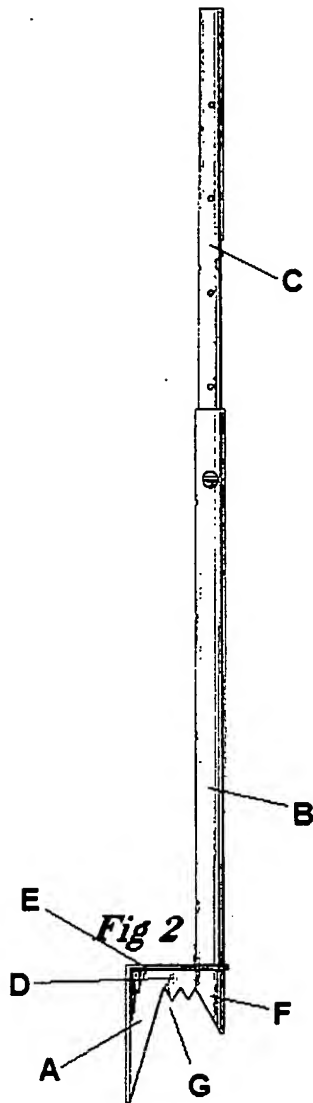
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 13, 15, 16, 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kitchen (US D292475).
3. Regarding claim 1, Kitchen discloses a plant stake support comprising a lowermost portion (A), which would inherently act as a primary anchor to support the stake in a ground surface, and an uppermost portion (B) which forms a base section and receives an interlocking upright section (C) therein. The uppermost portion (B) has a footprint that forms a narrow first ledge around its perimeter. An offset portion (D) connects the lowermost portion (A) to the uppermost portion (B), such that the uppermost portion (B) is axially offset from the lowermost portion (A). The offset portion (D) has an open platform (E) directly above the lowermost portion that inherently serves as a hammering point.
4. Regarding claim 2, in use, the lowermost portion (A) is inherently capable of being located below the ground surface, and the uppermost portion (B) is inherently capable of being located above the ground surface.

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5. Regarding claim 13, the stake support comprises a removal wedge (G) consisting of an asymmetric notch cut into a bracket, extending downwardly from the offset portion (D).
6. Regarding claim 15, Kitchen discloses a plant stake support comprising a base, having upper and lower surfaces, with spaced apart first and second ends. A first spike (A) extends downwardly from the lower surface of the base near the first end, and a second spike (F) extends downwardly from the lower surface of the base near the second end. The first spike (A) is substantially longer than the second spike (F). A receptacle (B), capable of retaining an end of a stake (C), extends upwardly from the second end of the base.
7. Regarding claim 16, the stake support comprises a platform (E) formed on the upper surface of the base, located above the first spike (A).
8. Regarding claim 20, the stake support includes a bracket (G) between a portion of the first (A) and second (F) spikes. The bracket (G) has a v-shaped notch portion, capable of receiving an implement for lifting the stake support.



Kitchen (US D292475) Figure 2

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kitchen (US D292457) in view of Steffes (US 3788336).

11. Regarding claim 17, Kitchen discloses everything previously mentioned, but does not disclose the platform comprises a substantially convex member. Steffes, however, discloses a stake having a substantially convex surface (31). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify the platform of Kitchen's stake support to include a convex surface as taught by Steffes, to provide a surface to receive hammer strikes and drive the support into the ground.

12. Claims 18, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitchen (US D292475) in view of Whitney (US 2817346).

Regarding claims 18 and 19, Kitchen discloses everything previously mentioned, including the upper and lower surfaces of the base are separated by an intermediate region, but does not disclose a curved extension extending outwardly from the base, wherein the curved extension is integral with the base lower surface of the base and extends outwardly and curves upwardly. Whitney, however, discloses a stake having a support base (14) with upper and lower surfaces and a curved extension (18), which is

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integral with the lower surface and extends outwardly and upwardly. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Kitchen's support stake to include a curved extension as taught by Whitney, to allow the support stake to receive another member such as a rope or hose.

13. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kitchen (US D292475) in view of Blankemeyer et al. (US 3732878).

14. Regarding claim 3, Kitchen discloses everything previously mentioned, but does not teach an I-shaped member where a first side element extends further and is longer than a second side element, and the lower end of the lowermost portion forms a point. Blankemeyer et al., however, teaches an I-shaped member (12) where a first side element (20) extends further and is longer than a second side element (22) and forms a point (42). Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to modify Kitchen's stake support to include a lowermost portion with an I-shaped member, as taught by Blankemeyer to easily and securely drive the lowermost portion into the ground.

15. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kitchen (US D292475) in view of Blankemeyer et al. (US 3732878) as applied to claim 3 above, and further in view of Jewett et al. (US 6237289).

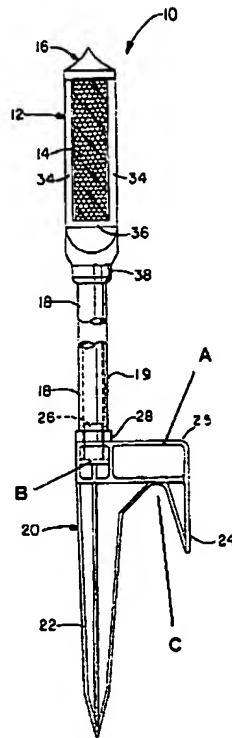
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Regarding claim 4, Kitchen in view of Blankemeyer discloses everything previously mentioned, including a bottom edge extending slopingly between the first (20) and second side elements (22), but does not teach that the bottom edge (44) includes an indented shoulder portion. Jewett et al., however, teaches a stake device having an indented shoulder portion (15) on the bottom edge. Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to further modify Kitchen's stake support, already modified by Blankemeyer, to include an indented shoulder portion on the bottom edge of the lowermost portion as taught by Jewett et al. to further facilitate penetration of the lowermost portion into the ground.

16. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kitchen (US D292475) in view of Bukky (US 6823814).

17. Regarding claim 5, Kitchen discloses everything previously mentioned, including the offset portion (D) extends generally at a right angle to the lowermost portion (A), but does not disclose a pair of spaced upper and lower parallel frame members. Bukky, however, discloses a support stake having parallel upper (A) and lower (B) frame members. The lower frame member (B) forms a narrow section ledge adjacent a base section (26). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Kitchen's support stake to include spaced upper and lower parallel frame members as taught by Bukky, with the lower frame member forming a narrow section ledge around a base section, as this would increase the strength and rigidity of the support stake.





Bukky (US 6823814) Figure 1

18. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kitchen (US D292475) in view of Bukky (US 6823814) as applied to claim 5 above, and further in view of Clark (US 2852307).

19. Regarding claim 8, Kitchen in view of Bukky discloses everything previously mentioned, but does not disclose an upper collar surrounding the base section in line with the first ledge formed by the upper frame member. Clark, however, discloses a support stake having an upper collar (8) partially extending around a base section (10), which is in line with a ledge formed by a frame member (12). Therefore, it would have

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been obvious to one having ordinary skill in the art at the time of invention to modify Kitchen's stake support, already modified by Bukky, to include an upper collar as taught by Clark, to allow the stake support to securely hold a sprinkler hose.

20. Regarding claim 9, Kitchen in view of Bukky and Clark discloses everything previously mentioned, and see the rejection of claim 5.

21. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kitchen (US D292475) in view of Bukky (US 6823814), and further in view of Whitney (US 2817346).

22. Regarding claim 6, Kitchen in view of Bukky discloses everything previously mentioned, but does not disclose a curled tongue extension on an outer side of the frame member. Whitney, however, discloses a stake having a support base (14) with a curled tongue extension (18) on an outer side of the base (14). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Kitchen's stake support, already modified by Bukky, to include a curved extension as taught by Whitney, to allow the stake support to receive another member such as a rope or hose.

23. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kitchen (US D292475) in view of Bukky (US 6823814) and Clark (US 2852307) as applied to claim 8 above, and further in view of Lamarre (US 3875699).

24. Regarding claim 10, Kitchen in view of Bukky and Clark discloses everything previously mentioned, but does not disclose notches cut into the first ledge and collar on opposing sides of the base member, where the notches are axially aligned on either side of the base member. Lamarre, however, discloses a support stake (11) having axially aligned notches (31) cut into opposing sides of the base member (21) (as seen in Figure 3). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Kitchen's stake support, already modified by Bukky and Clark, to include axially aligned notches on opposing sides of the base member, as this would allow the stake to hold wire or tubing along its base.

25. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitchen (US D292475) in view of Bukky (US 6823814) and Clark (US 2852307) as applied to claim 8 above, and further in view of Ferreira (US 3304683).

26. Regarding claims 11 and 12, Kitchen in view of Bukky and Clark discloses everything previously mentioned, but does not disclose the interlocking upright section consists of an extrusion that in cross section takes the form of a back-to-back C-shaped element, and that the interlocking section is formed of two interlocked back-to-back C-shaped elements wherein the second back-to-back C-shaped element is partially

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located within one back-to-back C-shaped element. Ferreira, however, discloses an interlocking upright section (36) in a base section (64), where the cross-section of the interlocking section (36) takes the form of a back-to-back C-shaped element (as seen in Figures 5, 5a). Ferreira also discloses an interlocking section (36) formed of two interlocked back-to-back C-shaped elements, where the second back-to-back C-shaped element is located within one back-to-back C-shaped element (as seen in Figure 8). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Kitchen's stake support, already modified by Bukky and Clark, to include back-to-back C-shaped interlocking elements, as the interlocking elements would provide a strong and secure interlocking section, capable of receiving another member within the elements.

### ***Response to Arguments***

27. Applicant's arguments with respect to claims 1-6, and 8-13 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

28. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Arnold (US D375663) discloses an irrigation sprinkler stake. Villelli (US 4095744) discloses a sprinkler system support for pipes. Christen et al. (US

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D334333) discloses a ground stake for supporting irrigation tubing. Lemkin et al. (US 4850555) discloses a stake and support for holding an irrigation device. Rosenberg (US 4256262) discloses a mounting device for water irrigation. Bradshaw (US 3941342) discloses an adjustable soaker hose support. Guo (US D481444) discloses a base for a sprinkler. Olson (US 4944476) discloses a sprinkler stake.

29. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Devoti whose telephone number is 571-272-2733. The examiner can normally be reached on M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PD *PD*  
08/31/06

LANNA MAI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

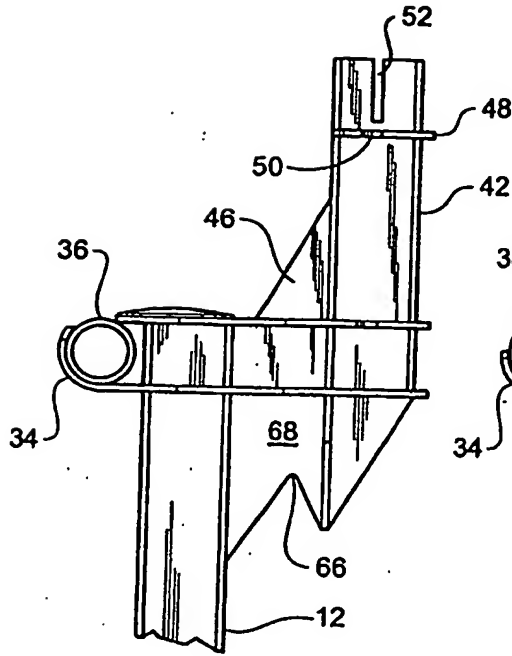




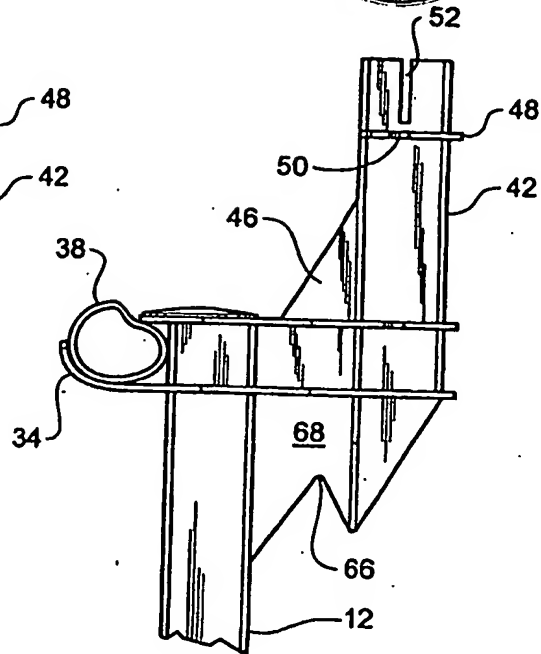
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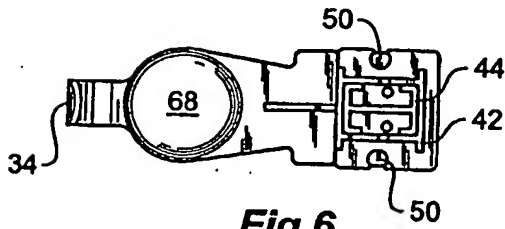
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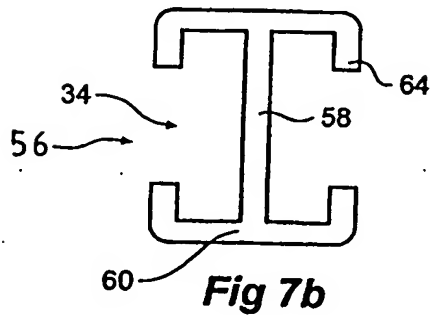
**Fig 5a**



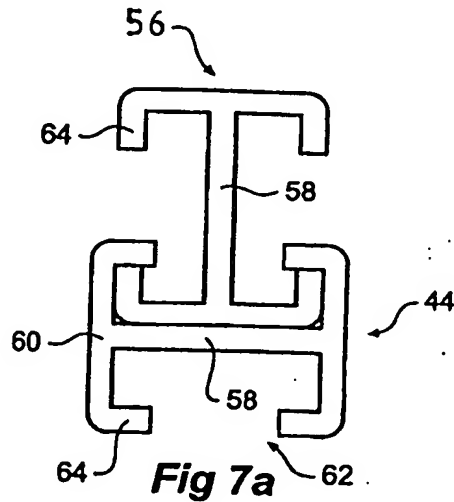
**Fig 5b**



**Fig 6**



**Fig 7b**



**Fig 7a**